

CLAUSE I-37 – DEFAULT (FIXED-PRICE CONSTRUCTION) (August 2002)

- (a) If the Subcontractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this subcontract including any extension, or fails to complete the work within this time, SURA may, by written notice to the Subcontractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, SURA may take over the work and complete it by subcontract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Subcontractor and its sureties shall be liable for any damage to SURA resulting from the Subcontractor's refusal or failure to complete the work within the specified time, whether or not the Subcontractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by SURA in completing the work.
- (b) The Subcontractor's right to proceed shall not be terminated nor the Subcontractor charged with damages under this clause, if –
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another subcontractor in the performance of a subcontract with SURA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of lower-tier subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Subcontractor and the lower-tier subcontractors or suppliers; and
 - (2) The Subcontractor, within 10 days from the beginning of any delay (unless extended by SURA), notifies SURA in writing of the causes of delay. SURA shall ascertain the facts and the extent of delay. If, in the judgment of SURA, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of SURA shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- (c) If, after termination of the Subcontractor's right to proceed, it is determined that the Subcontractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of SURA.
- (d) The rights and remedies of SURA in this clause are in addition to any other rights and remedies provided by law or under this subcontract.